

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 603 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHMABANU A ANSARI

Versus

MADANLAL H JAIN

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Appearance:

MR BG JANI for Petitioner  
MR MIG MANSURI for Respondent No. 1  
MR PB BHATT APP for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/11/98

ORAL JUDGEMENT

Heard learned advocate Mr. F.B Brahmbhatt for the respondent no. 1 and the learned APP Mr. Bhatt for the respondent no. 2. Learned advocate Mr. Jani for the

petitioner is not present on call.

2. This is an application under Section 482 CrPC preferred by the accused in Criminal Case No. 652/95 pending before the learned Judicial Magistrate, First Class, Vansda. The complaint has been lodged by the respondent no. 1 herein against the applicant for commission of offence punishable under Section 323, 504, 506 (2) IPC. The allegation is that the accused applicant no. 1 herein advanced certain loans to the daughter and the son-in-law of the complainant which was not repaid by the said daughter and the son-in-law. The accused, therefore, approached the complainant at village Vansda alongwith one another person, beat the complainant and threatened him of dire consequences in case he failed to discharge the liabilities of his daughter and the son-in-law. The offence is alleged to have been committed on 3rd October, 1995 and the complaint has been lodged before the Magistrate on 5th October, 1995. On the same date, i.e., on 5th October, 1995, the learned Magistrate ordered to issue summons upon the accused. The accused has preferred the present application and has sought quashing of the said complaint mainly on the grounds that the complaint lodged against the accused is false, that the complainant has been residing at Mumbai along with his daughter and the son-in-law and he is not residing at Vansda at all and on 3rd October, 1995, the accused was actually under the treatment of a doctor at Sir JJ Hospital, Mumbai and she could not have been present at Village-Vansda, as alleged. She has also produced a copy of the medical report for the treatment received by her from one Dr. Kamalkar of Sir JJ Hospital, Mumbai from 3rd October, 1995 and thereafter.

The application is contested by Mr. Brahmabhatt on behalf of the complainant. The complainant has made Affidavit-in-Reply to the application and has produced copy of his Bank Account to show that he has been residing at village-Vansda. He has also produced copy of the service of notice of this Court which was served upon him at Vansda. The complainant has challenged the veracity of the alibi pleaded by the accused. The facts stated in the complaint do constitute commission of offence, as alleged. Whether the complaint is genuine or not is a matter of investigation and it cannot be said at this stage that the complaint is false, as alleged. Prima facie, it does appear that the complainant has been residing at Vansda. Further, the correctness of the alibi pleaded by the accused also requires to be verified. Without investigating into the plea of alibi, it cannot be said that on 3rd October, 1995, the accused

was present in Bombay and there was no possibility of her being at Vandsa. Besides the two certificates - one produced by the accused at Annexure "B" to the application and the another produced by the complainant at Annexure "C" to his Affidavit do raise suspicion regarding correctness of the said certificates. It is, therefore, all the more imperative that the alibi pleaded by the accused be verified. I am, therefore, of the view that the complaint made by the respondent no. 1 herein, registered as Criminal Case NO. 652 of 1995 in the Court of Judicial Magistrate, First Class, Vandsa does not deserve to be quashed at this stage. Rule is discharged. Ad-interim relief is vacated.

After the above order was dictated the learned advocate Mr. K.C Patel has appeared for Mr. Jani, the learned advocate appearing for the applicant and has sought adjournment on the ground that Mr. Jani has gone to the Gujarat State Cooperative Tribunal to attend a matter there. Request is rejected.

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Prakash\*